

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ADVANCED MULTILEVEL CONCEPTS,)	Case Nos. 11-6679-SC
INC. and ABLE DIRECT MARKETING,)	
)	ORDER GRANTING MOTION TO
Plaintiffs,)	DISMISS, DENYING MOTION TO
)	STRIKE, DENYING MOTION FOR
v.)	SANCTIONS, AND DENYING
)	MOTION FOR PARTIAL JUDGMENT
STALT, INC., HILLARD M.)	<u>ON THE PLEADINGS</u>
STERLING, ESQ., FREEBORN &)	
PETERS LLP, and DOES 1 through)	
30, inclusive,)	
)	
Defendants.)	
)	
)	

I. INTRODUCTION

This case arises out of allegedly unlawful "stop orders" imposed upon shares of VitaminSpice held by Plaintiffs Advanced Multilevel Concepts ("Advanced") and Able Direct Marketing ("Able") (collectively, "Plaintiffs"). ECF No. 1 ("Compl."). Plaintiffs bring this action against Stalt, Inc. ("Stalt"), the Transfer Agent that allegedly imposed the stop orders; Hillard M. Sterling ("Sterling"), the attorney who allegedly counseled VitaminSpice to issue the stop orders; and Freeborn & Peters LLP ("Freeborn & Peters"), an Illinois law firm at which Sterling was a partner during the relevant period (collectively, "Defendants"). Stalt has filed an Answer denying most of the allegations in Plaintiffs'

1 Complaint. ECF No. 4 ("Answer").

2 Now before the Court are four motions. Sterling and Freeborn
3 & Peters (the "Freeborn Defendants") move to dismiss and strike the
4 Complaint and also move for Rule 11 Sanctions. ECF Nos. 27
5 ("MTD"), 29 ("MTS") 50 ("Rule 11 Mot.").¹ Plaintiffs move for
6 judgment on the pleadings against Stalt based on its Answer. ECF
7 No. 34 ("MJP").² The Court finds these matters appropriate for
8 disposition without oral argument. For the reasons set forth
9 below, the Court GRANTS the Freeborn Defendants' motion to dismiss,
10 and DENIES their motion to strike as moot. The Court also DENIES
11 the Freeborn Defendants' motion for sanctions and Plaintiffs'
12 motion for partial judgment on the pleadings.

13 14 **II. BACKGROUND**

15 This case concerns stop orders placed on Plaintiffs' shares of
16 VitaminSpice. Plaintiffs are Wyoming corporations. Compl. ¶¶ 1-2.
17 VitaminSpice is also a Wyoming corporation and has its principal
18 place of business in Wayne, Pennsylvania. Compl. ¶ 6. The alleged
19 wrongdoing begins with VitaminSpice's Chief Executive Officer
20 ("CEO"), Edward Bukstel ("Bukstel"), who allegedly abused alcohol
21 at work and mismanaged the company's accounting function. Id. ¶¶
22 32-34. Bukstel's alleged improprieties were reported to
23 VitaminSpice's board of directors by Jehu Hand ("Hand"), the
24 company's bookkeeper and securities counsel. Id. ¶ 37. Bukstel

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26 ¹ The Freeborn Defendants' motions to dismiss and strike are fully
27 briefed. ECF Nos. 43 ("MTD Opp'n"), 46 ("MTD Reply"), 41 ("MTS
Opp'n"), 47 ("MTS Reply"). Plaintiffs have yet to file an
opposition to the motion for sanctions.

28 ² Plaintiffs' motion for judgment on the pleadings is fully
briefed. ECF Nos. 38 ("MJP Opp'n"), 40 ("MJP Reply").

1 allegedly retaliated in early July 2010 by terminating Hand and by
2 ordering VitaminSpice's transfer agent, Stalt, to impose a stop
3 order on the shares of Able, who had hired Hand as corporate
4 counsel. Id. ¶¶ 38-39.

5 Stalt allegedly sent a letter to Able on July 12, 2010,
6 stating that it had placed a stop order on Able's VitaminSpice
7 shares "at the request of Vitamin Spice." Compl. Ex. A ("July 12
8 Ltr."). The July 12 letter further states:

9
10 Stalt, Inc. is treating this as an adverse claim. If
11 [Able's common stock] certificate is properly presented
12 for transfer[,] VitaminSpice will have 30 days to get a
13 court order or bond in place. If Stalt, Inc. does not
have written evidence of one of these within 30 days we
will remove the Stop Order and effect the transfer of the
above mentioned certificate as presented if the transfer
request has not been withdrawn.

14 Id. In its Answer, Stalt states that the July 12 letter "speaks
15 for itself" and that Stalt lacks "knowledge or information
16 sufficient as to form a belief as to the truth or falsity of the
17 allegations" concerning the issuance of the stop order. Answer ¶
18 39.

19 Around August 24, 2010, Bukstel had second thoughts about the
20 stop order on Able's shares. Id. ¶ 44. Soon thereafter, the
21 Freeborn Defendants allegedly took actions to ensure that the stop
22 order would remain in place. Sterling is admitted to the practice
23 of law in Illinois and was a partner at Freeborn & Peters at the
24 time the alleged misconduct occurred. Id. ¶ 13. Freeborn & Peters
25 is a law firm with a principal place of business located in
26 Chicago, Illinois. Id. at 3. Sterling allegedly advised
27 VitaminSpice's board of directors to leave the Able stop order in
28 place and expand its scope to include Advanced's shares of

VitaminSpice.³ Id. ¶¶ 44-45.

Plaintiffs allege that Sterling also telephoned Stalt's CEO, Bill Senner ("Senner"), in California on October 5, 2010 and made "a series of slanderous allegations regarding fraud or other malfeasance purportedly surrounding Plaintiffs and the validity of their ownership claim over the Shares." Id. ¶ 52. Later that day, Senner sent an email to Bukstel stating: "I just spoke with Hillard Sterling. Although I didn't say much, he had some interesting information to say the least."⁴ Compl. Ex. D.

On October 6, 2010, the VitaminSpice board of directors passed a resolution placing a stop order on Advanced's shares. Id. ¶ 55. The resolution stated: "[T]he Directors of the Corporation have been notified by Hillard Sterling, an attorney engaged in litigation against Jehu Hand . . . of potential irregularities with Shareholders represented by Jehu Hand." Id.

The next day, October 7, Stalt sent a letter to Advanced informing it that a stop order had been placed on Advanced's VitaminSpice shares at the request of VitaminSpice. Compl. ¶ 57, Ex. C ("Oct. 7 Ltr."). The October 7 letter is, in all relevant

³ The Freeborn Defendants' alleged motivations for harming Plaintiffs are convoluted, though the Court reserves judgment on their plausibility. Plaintiffs allege that the lawyers were advancing the interests of one of their other clients, Keith A. Mazer ("Mazer"), who was engaged in litigation with Hand over a residential property in Antigua worth over one million dollars. Id. ¶ 17. Hand and Mazer are also allegedly embroiled in three other federal court proceedings. Id. Plaintiffs allege that "Sterling presumed that the damage [to Plaintiffs] would accrue to Hand by consequence . . . [;] it was his hope that . . . Mazer would thereby gain an advantage by way of an injured adversary with diminished resources to continue the litigation in which Mazer and Hand were . . . vigorously engaged." Id. ¶ 48.

⁴ Plaintiffs allege that Sterling called Senner on October 6, 2010, Compl. ¶ 51, but the email attached to the Complaint indicates that the conversation took place on October 5, Compl. Ex. D.

1 respects, identical to the letter Stalt sent to Able on July 12.
2 Compare July 12 Ltr. with Oct. 7 Ltr. In its Answer, Stalt
3 "admits" Plaintiffs allegations regarding the October 7 letter.
4 Answer ¶ 57.

5 Plaintiffs allege that they lost over \$2 million as a result
6 of the stop orders because VitaminSpice's share price dropped
7 precipitously while the stop orders were in place. Compl. ¶ 75.
8 Plaintiffs explain that no broker will accept "stopped shares" for
9 deposit because the marketability of those shares has been called
10 into question. Id. ¶ 60. Thus, according to Plaintiffs, "a 30-day
11 stop order amounts to a permanent block of sale." Id. Plaintiffs
12 allege that, sometime after November 2010, Stalt temporarily
13 refrained from reissuing the 30-day stop order "at every single
14 step in the chain leading to sale." Id. ¶ 64. Pursuant to these
15 concessions, Plaintiffs were able sell their shares and mitigate
16 some of their damages. Id. ¶ 65.

17 On November 9, 2010, Plaintiffs filed an action against
18 VitaminSpice, Bukstel, Stalt, and a number of other defendants in
19 Orange County Superior Court. ECF No. 31 ("Defs.' RJN") Ex. A.
20 The Superior Court dismissed the action without prejudice on venue
21 and jurisdiction grounds. Compl. at 11, n.4. On June 8, 2011,
22 Plaintiffs filed another suit against Bukstel and VitaminSpice in
23 the United States District Court for the Eastern District of
24 Pennsylvania (the "Pennsylvania Action"); Stalt and the Freeborn
25 Defendants are not named in the action. Defs.' RJN Ex. B. The
26 Pennsylvania Action was later transferred to bankruptcy court and
27 was stayed when Hand filed an involuntary bankruptcy petition
28 against VitaminSpice on August 5, 2011. Defs.' RJN Ex. C.

Plaintiffs filed the instant action on December 28, 2011 against Stalt and the Freeborn Defendants. They assert two causes of action against Stalt: (1) breach of California Commercial Code ("the Commercial Code") §§ 8401, 8403(b) et seq.;⁵ and (2) conversion. Plaintiffs' last three causes of action are directed against the Freeborn Defendants: (3) intentional interference with prospective economic advantage; (4) legal malpractice; and (5) libel. Plaintiffs pray for damages flowing from Defendants' alleged misconduct, as well as punitive and exemplary damages.

III. DISCUSSION

A. The Freeborn Defendants' Motion to Dismiss

The Freeborn Defendants argue that Plaintiffs' claims against them should be dismissed under Federal Rule of Civil Procedure 12(b)(2) because the court lacks personal jurisdiction. MTD at 8. The argument is predicated on the fact that Sterling is admitted to practice law in Illinois and Freeborn & Peters' principal place of business is located in Chicago, Illinois. Compl. ¶¶ 13-14. Plaintiffs respond that the exercise of general jurisdiction is appropriate in light of the Freeborn Defendants' contacts with California, or, alternatively, specific jurisdiction is appropriate because Plaintiffs' claims arise out of Sterling's phone call to Stalt in California. MTD Opp'n at 5-7. The Court finds Plaintiffs' arguments unavailing and concludes that it lacks jurisdiction to hear their claims against the Freeborn Defendants.

⁵ Plaintiffs' first cause of action is styled as "Breach of Uniform Commercial Code" ("UCC"). Compl. at 14. California has adopted the UCC as part of the California Commercial Code. For the sake of clarity, the Court refers to the codified California code sections rather than the UCC.

1 1. General Jurisdiction

2 General jurisdiction exists where the defendant engages in
3 "continuous and systematic general business contacts that
4 approximate physical presence in the forum state. This is an
5 exacting standard, as it should be, because a finding of general
6 jurisdiction permits a defendant to be haled into court in the
7 forum state to answer for any of its activities anywhere in the
8 world." Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 801
9 (9th Cir. 2004) (internal quotations and citations omitted).

10 Plaintiffs argue that general jurisdiction is appropriate
11 because Sterling has successfully applied to appear pro hac vice
12 before the United States District Court for the Central District of
13 California in three separate cases since October 2009. MTD Opp'n
14 at 5-6 (citing ECF No. 44 ("Pls.' RJN") Ex. A). Plaintiffs
15 represent that these pro hac vice appearances include approximately
16 six visits to California for the purposes of mediation, conducting
17 depositions, and other trial machinations. Id. at 6. This
18 argument lacks merit. Pro hac vice status is inherently temporary,
19 and six visits to California hardly approximates a physical
20 presence in the state. Further, it appears that many of Sterling's
21 pro hac vice appearances occurred after he left Freeborn & Peters
22 and, therefore, have no bearing on Freeborn & Peters' contacts with
23 California. See Calder v. Jones, 465 U.S. 783, 790 (1984) ("[E]ach
24 defendant's contacts with the forum State must be assessed
25 individually.").

26 Plaintiffs further argue that California Rule of Court 9.40(f)
27 requires that the Court exercise personal jurisdiction. MTD Opp'n
28 at 7. Rule 9.40(f) provides, in relevant part:

1 A person permitted to appear as counsel pro hac vice . .
2 . is subject to the jurisdiction of the courts of this
3 state with respect to the law of this state governing the
4 conduct of attorneys to the same extent as a member of
5 the State Bar of California. The counsel pro hac vice
6 must familiarize himself or herself and comply with the
standards of professional conduct required of members of
the State Bar of California and will be subject to the
disciplinary jurisdiction of the State Bar with respect
to any of his or her acts occurring in the course of such
appearance.

7 Cal. Rule of Ct. 9.40(f). In other words, under Rule 9.40, an out-
8 of-state attorney is subject to jurisdiction in California for
9 charges of professional misconduct arising out of his or her pro
10 hac vice appearance in the state. Contrary to Plaintiffs'
11 assertions, the rule does not provide that a pro hac vice
12 appearance subjects an attorney to jurisdiction in California for
13 claims unrelated to that appearance. Since Plaintiffs' claims are
14 not connected to Sterling's pro hac vice appearances in California,
15 these appearances cannot support the exercise of jurisdiction here.

16 Plaintiffs also argue that Sterling has the requisite minimum
17 contacts with California since he left Freeborn & Peters to join
18 Lewis Brisbois Bisgaard & Smith ("Lewis Brisbois"), a multi-state
19 law firm with offices in San Francisco, San Diego, San Bernadino,
20 Costa Mesa, and Los Angeles. MTD Opp'n at 6. Plaintiffs point out
21 that Sterling has recently filed documents with the Central
22 District of California and that these documents provide the Costa
23 Mesa address of Lewis Brisbois as Sterling's business address. Id.
24 (citing Pls.' RJN Exs. C, D).

25 These facts are unpersuasive as they fail to show that
26 Sterling has "continuous and systematic" contacts with the forum.
27 Missing from Plaintiff's evidence is any indication that Sterling
28 regularly works out of Lewis Brisbois's offices in California, as

1 opposed to its offices in other states. Sterling's filings with
2 the Central District of California do not support Plaintiffs'
3 position. Indeed, they tend to undermine it. The signature line
4 on one of these filings lists Sterling's address as Chicago,
5 Illinois. Pls.' RJN Ex. C at 5. Attached to the other filing is a
6 proof of service executed in Chicago. Pls.' RJN Ex. D at 8. Both
7 documents indicate that Sterling was appearing pro hac vice and was
8 working with other Lewis Brisbois attorneys who are admitted to
9 practice law in California. See Pls.' RJN Exs. C, D. It is
10 logical to assume that the Costa Mesa address listed in these
11 documents belongs to Lewis Brisbois's California attorneys, not to
12 Sterling. Taken together, these facts tend to support jurisdiction
13 in Illinois, not California.

14 For these reasons, the Court concludes that the Freeborn
15 Defendants lack the minimum contacts with California necessary to
16 support the exercise of general jurisdiction.

17 2. Specific Jurisdiction

18 The Ninth Circuit has enunciated a three-prong test for
19 analyzing a claim of specific jurisdiction:

20 (1) The non-resident defendant must purposefully direct
21 his activities or consummate some transaction with the
22 forum or resident thereof; or perform some act by which
23 he purposefully avails himself of the privilege of
conducting activities in the forum, thereby invoking the
benefits and protections of its laws;

24 (2) the claim must be one which arises out of or relates
to the defendant's forum-related activities; and

25 (3) the exercise of jurisdiction must comport with fair
26 play and substantial justice, i.e. it must be reasonable.

27 Schwarzenegger, 374 F.3d at 802. The first prong is often referred
28 to as "the purposeful availment prong." "If the plaintiff succeeds

1 in satisfying both of the first two prongs, the burden then shifts
2 to the defendant to 'present a compelling case' that the exercise
3 of jurisdiction would not be reasonable." Id.

4 "[A] foreign act that is both aimed at and has effect in the
5 forum state satisfies the purposeful availment prong of the
6 specific jurisdiction analysis." Bancroft & Masters, Inc. v.
7 Augusta Nat'l Inc., 223 F.3d 1082, 1087 (9th Cir. 2000). For
8 example, in Calder, a California plaintiff sued a national magazine
9 and other defendants for an allegedly defamatory article that had
10 been written and edited in Florida. 465 U.S. at 785. The Supreme
11 Court upheld the exercise of personal jurisdiction in California,
12 even though the defendants had few contacts with the state. Id. at
13 789-90. The court reasoned that the defendants' actions "were
14 expressly aimed at California" and "[the defendants] knew that the
15 brunt of th[e] injury would be felt by [the plaintiff] in the
16 State." Id.

17 The Ninth Circuit construes Calder to impose three
18 requirements: "the defendant allegedly [must] have (1) committed an
19 intentional act, (2) expressly aimed at the forum state, (3)
20 causing harm that the defendant knows is likely to be suffered in
21 the forum state." Yahoo! Inc. v. La Ligue Contre Le Racisme Et
22 L'Antisemitisme, 433 F.3d 1199, 1206 (9th Cir. 2006) (quoting
23 Schwarzenegger, 374 F.3d at 803). As to the third requirement,
24 "the 'brunt' of the harm need not be suffered in the forum state."
25 Id. at 1207. "If a jurisdictionally sufficient amount of harm is
26 suffered in the forum state, it does not matter that even more harm
27 might have been suffered in another state." Id.

28 Here, Plaintiffs' argument for the exercise of specific

1 jurisdiction is predicated on Sterling's October 5 telephone call
2 with Senner, Stalt's CEO, who was located in California at the
3 time. MTD Opp'n at 7-8. Plaintiffs insist that it is plausible
4 that: (1) Sterling initiated the call, (2) Sterling advised Stalt
5 regarding potential irregularities in Plaintiffs' VitaminSpice
6 shares, and (3) this call was the proximate cause of the stop order
7 issued by Stalt the following day. Id. at 8.

8 Even if the Court were to draw these inferences, the exercise
9 of specific jurisdiction would be inappropriate since there is no
10 indication that Plaintiffs suffered any harm in California or that
11 Sterling's actions were aimed at California. Plaintiffs are
12 Wyoming corporations with no apparent connections to California.
13 Compl. ¶¶ 1-2. Accordingly, Sterling's telephone call with Senner
14 and the stop orders that allegedly resulted from that call could
15 not have injured Plaintiffs in California.

16 The Ninth Circuit's decision in Metropolitan Life Insurance
17 Co. v. Neaves, 912 F.3d 1062 (9th Cir. 1990), is instructive. The
18 defendant, an Alabama resident, mailed fraudulent information to an
19 insurer in order to claim life insurance policy benefits to which
20 she was not entitled, ultimately reducing the share of benefits
21 distributed to another beneficiary who resided in California. 912
22 F.3d at 1063. The defendant argued California courts lacked
23 jurisdiction, urging the Ninth Circuit "to focus only on her
24 conduct in mailing the fraudulent information, contending that it
25 was 'only fortuitous' that the mailing was directed to California
26 as opposed to, for example, [the insurer's] headquarters in New
27 York." Id. at 1065. The Court found that it was irrelevant where
28 the letter was sent; the critical inquiry was where the impact of

1 the fraud took place. Id. Likewise, here, Plaintiffs focus on
2 where Sterling's phone call was directed but do not address where
3 the harm was sustained.

4 For the reasons set forth above, the Court declines to
5 exercise specific or general jurisdiction over the Freeborn
6 Defendants. Accordingly, the Court DISMISSES WITHOUT PREJUDICE
7 Plaintiffs' claims against the Freeborn Defendants. As the Court
8 lacks jurisdiction to address the merits of Plaintiffs' claims, it
9 DENIES the Freeborn Defendants' motion to strike.

10 **B. The Freeborn Defendants' Motion for Rule 11 Sanctions**

11 Plaintiffs have yet to file an opposition to the Freeborn
12 Defendants' motion for Rule 11 sanctions. Nevertheless, having
13 reviewed the moving papers, the Court can discern no convincing
14 reason to grant the motion.

15 Since the Court lacks subject matter jurisdiction, it is
16 hesitant to rule on the merits of Plaintiffs' claims against the
17 Freeborn Defendants, let alone find that those claims are
18 frivolous. Further, the motion lacks merit. The Freeborn
19 Defendants essentially argue that Plaintiffs' claims must be
20 frivolous because they fail as a matter of law. But that is not
21 how Rule 11 works. "The key question in assessing frivolousness is
22 whether a complaint states an arguable claim -- not whether the
23 pleader is correct in his perception of the law." Hudson v. Moore
24 Bus. Forms, Inc., 836 F.2d 1156, 1159 (9th Cir. 1987). The Court
25 concludes that the Complaint, at the very least, states an arguable
26 claim.

27 The Freeborn Defendants also argue that Plaintiffs' claims
28 were filed for an improper purpose. Specifically, they state that:

[T]he history between Plaintiffs' corporate attorney, Jehu Hand, and the Freeborn Defendants suggests that Plaintiffs have filed their Complaint in this action in an effort to drive a wedge between attorney Sterling and Mr. Mazer and in retaliation for the Freeborn defendants' zealous representation [of] Mr. Mazer in three unrelated actions involving Mr. Hand Additionally, the history between VitaminSpice, Plaintiffs[,] and Mr. Hand suggest that this Complaint was filed in an attempt to drive a wedge between Mr. Sterling and VitaminSpice . . .

Sanctions Mot. at 15-16. Plaintiffs have leveled similar allegations against the Freeborn Defendants, claiming that they counseled VitaminSpice to impose the stop orders so that Mazer could gain an advantage over Hand in the separately filed actions. Compl. ¶ 17. The Court suspects that Plaintiffs would assert that this sanctions motion was filed for that same improper purpose. The Court declines to involve itself in such feuds. It also declines to conclude that Plaintiffs filed this action for an improper purpose. The Freeborn Defendants would have the Court conclude that Plaintiffs sued them to harm or settle a score with Mazer. A more plausible inference is that Plaintiffs filed this action to recover for damages they suffered as a result of the Freeborn Defendants' allegedly illicit conduct -- a perfectly proper purpose.

For these reasons, the Court DENIES the Freeborn Defendants' motion for sanctions.

C. Plaintiffs' Motion for Judgment on the Pleadings

Plaintiffs move for partial judgment on the pleadings against Stalt as to its liability on Plaintiffs' first cause of action for breach of Division 8 of the Commercial Code.⁶ The crux of Plaintiffs' motion is that Division 8 provides that only the

⁶ Plaintiffs also pray for a hearing to determine the amount of damages. MJP at 5.

1 registered owner of a stock certificate may lawfully instruct a
2 transfer agent to impose a stop order. MJP at 7. Accordingly,
3 Plaintiffs argue that VitaminSpice lacked legal authority to
4 instruct Stalt to issue the stop order on Plaintiffs' shares. Id.
5 Plaintiffs further argue that Stalt, as a transfer agent, may be
6 held liable for damages arising from the unauthorized stop orders
7 under Section 8407 of the Commercial Code. Id.

8 The legal standard for evaluating a motion for judgment on the
9 pleadings is well-settled. "Judgment on the pleadings is proper
10 when the moving party clearly establishes on the face of the
11 pleadings that no material issue of fact remains to be resolved and
12 that it is entitled to judgment as a matter of law." Hal Roach
13 Studios, Inc. v. Feiner & Co., Inc., 896 F.2d 1542, 1550 (9th Cir.
14 1989). "All allegations of fact by the party opposing the motion
15 are accepted as true, and are construed in the light most favorable
16 to that party." Gen. Conference Corp. of Seventh-Day Adventists v.
17 Seventh-Day Adventist Congregational Church, 887 F.2d 228, 230 (9th
18 Cir. 1989). Thus, "a plaintiff is not entitled to judgment on the
19 pleadings when the answer raises issues of fact that, if proved,
20 would defeat recovery." Id. However, the Court does not "assume
21 the truth of legal conclusions merely because they are cast in the
22 form of factual allegations." W. Mining Council v. Watt, 643 F.2d
23 618, 624 (9th Cir. 1981).

24 In the instant action, it appears that Plaintiffs may have a
25 strong case against Stalt on summary judgment, especially since
26 many of the arguments Stalt raises in its opposition brief appear
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1 to lack merit.⁷ However, at this stage, entering judgment in favor
2 of Plaintiffs would be premature. Plaintiffs ask the Court to
3 infer too much from the pleadings, especially since the Court must
4 construe the allegations in the light most favorable to the non-
5 moving party.

6 Plaintiffs rely heavily on the July 12 Letter and the October
7 7 Letter, both of which were attached to the Complaint. In these
8 letters, Stalt informed Plaintiffs that it had placed a Stop Order
9 on certain VitaminSpice Shares at the request of VitmainSpice.
10 Stalt has not denied the authenticity or content of these letters.⁸
11 However, there are only so many inferences the Court may draw from
12 the documents, especially where those inferences would favor the
13 moving party. For example, Plaintiffs argue that VitaminSpice
14 lacked the authority to impose a stop order on their stock
15 certificates as "the Certificates in question are not titled in its
16 name, nor has ownership of the Certificates ever been assigned to
17 [VitaminSpice] via special indorsement." MJP at 10. The Court may
18 not jump to such conclusions since these facts are not apparent
19 from the July 12 Letter or the October 7 Letter. Nor are these
20 facts admitted in Stalt's Answer. The Complaint describes
21 Plaintiffs' VitaminSpice stock certificates. Compl. ¶¶ 1-2. In
22 response, Stalt states that it "lacks knowledge or information
23 sufficient as to form a belief as to the truth or falsity of the
24 allegations . . . and, therefore denies them." Answer ¶¶ 1-2.

25 ⁷ The Court notes that Stalt's interpretation of the Commerical
26 Code, as enunciated in its opposition papers, is unpersuasive.

27 ⁸ In its Answer, Stalt states that the July 12 Letter "speaks for
28 itself" and "admits the allegations of paragraph 57 [of the
Complaint]," which references the October 7 Letter. Answer ¶¶ 39,
57.

1 The Court also notes that Plaintiffs do not address any of the
2 six affirmative defenses alleged in Stalt's Answer. The Court
3 concedes that these affirmative defenses are not particularly well-
4 pled -- indeed, many do not appear to be affirmative defenses at
5 all. Nevertheless, "if the defendant raises an affirmative defense
6 in his answer it will usually bar judgment on the pleadings,"
7 Seventh-Day Adventists, 887 F.2d at 230, and Plaintiffs have failed
8 to explain why Stalt's affirmative defenses are defective. The
9 Court declines to do the work for Plaintiffs, especially on a
10 dispositive motion that could deprive Stalt of a future opportunity
11 to plead its case.⁹

12 Accordingly, the Court DENIES Plaintiffs' motion for partial
13 judgment on the pleadings.

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27 ⁹ Curiously, Plaintiffs' moving papers devote significant space to
28 defenses which Stalt might have -- but did not -- raise. MJP at 9-
16. Equally curious, Stalt fails to address any of its asserted
affirmative defenses in its opposition papers.

1 **IV. CONCLUSION**

2 For the reasons set forth above, the Court GRANTS Defendants
3 Hillard M. Sterling, Esq., and Freeborn & Peters LLP's motion to
4 dismiss and DISMISSES Plaintiffs Advanced Multilevel Concepts,
5 Inc., and Able Direct Marketing's claims against these defendants
6 WITHOUT PREJUDICE. The Freeborn Defendants' motion to strike and
7 motion for sanctions are DENIED. Further, the Court DENIES
8 Plaintiffs' motion for partial judgment on the pleadings against
9 Defendant Stalt, Inc. The Court hereby sets a status conference
10 for July 6, 2012 at 10:00 a.m. in Courtroom 1, 450 Golden Gate
11 Avenue, San Francisco, California.

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13 IT IS SO ORDERED.

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15 Dated: May 21, 2012

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17 UNITED STATES DISTRICT JUDGE
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